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A P P E A R A N C E S: (Continued)

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Larry MacStravic, The Courtroom Deputy

1 (PROCEEDINGS, held in open court before the Honorable
2 Robert B. Kugler, United States District Judge, and Thomas I.
3 Vanaskie (Ret.), Special Master, at 1:05 p.m. as follows:)

4 THE COURTROOM DEPUTY: All rise.

5 JUDGE KUGLER: Afternoon. Have a seat, everybody.

6 We seem to be losing people at a rapid clip. Is it
7 because you're just bored with the case or...

8 MR. HONIK: Not at all, Your Honor. Daniel and I
9 think of ourselves as the Zack Wheeler and Aaron Nola of the
10 valsartan plaintiffs' team. So we wanted to bring the best to
11 you today.

12 JUDGE KUGLER: Well, thank you. That's very nice.

13 Okay. Before we get to what's on the agenda, I think
14 Judge Vanaskie has some questions.

15 JUDGE VANASKIE: Yeah. I just wanted to see where
16 things stood with respect to the irbesartan and losartan fact
17 sheets.

18 MR. HONIK: Good afternoon, Your Honor. I can report
19 briefly on that. I'm not the closest one to this topic. But
20 I'm advised that we've received from the other side a draft PFS
21 just late last week, and we have been asked to comment by
22 October 11th. And we have a schedule, if you will, in order to
23 work on that draft. And I can report that we're meeting and
24 conferring --

25 JUDGE VANASKIE: Moving forward.

1 MR. HONIK: -- and we'll be prepared in the coming
2 weeks to provide you with hopefully a final version of it.

3 JUDGE VANASKIE: Mr. Geoppinger, did you want to be
4 heard on that?

5 MR. GEOPPINGER: Yeah, Your Honor, just real briefly.

6 What Mr. Honik reported is largely correct. We
7 prepared the fact sheet as you instructed us to do. We
8 conferred with the other defendants. The actual fact sheet is
9 still -- the draft is still in process and we'll get it to the
10 plaintiffs very shortly. What we did provide the plaintiffs
11 was a scheduling order for the discovery and the first eight
12 being us to provide the fact sheet to them so they could
13 consider it and we can negotiate and then bring it to the Court
14 if we have any issues. But we've got that scheduling order out
15 there; the plaintiffs have that. The fact sheet they will have
16 very shortly on the third-party payors.

17 And one thing I just wanted to mention that came up,
18 and I realize Mr. Stanoch isn't here today, I just wanted to
19 mention this to the Court, he and I discussed the fact that in
20 putting the fact sheet together, we realized that the master
21 complaints in losartan and irbesartan have a number of claims
22 in them that were subject to the motions to dismiss in the
23 valsartan case. So we mutually agreed that it would be a good
24 idea for us both to give some consideration to how we might be
25 able to deal with those, short of motions to dismiss, and maybe

1 see if we can come to some kind of agreed resolution as to how
2 to deal with those claims so that if we agree certain claims
3 are not in the case, that we don't have to prepare a fact sheet
4 that addresses those claims.

5 So we left it with we both talked to our respective
6 sides and tried to come up with a plan to do that. We're still
7 working on that, but I imagine that's going to be part of this
8 process as well.

9 JUDGE VANASKIE: Okay. Very well. Thanks.

10 MR. GEOPPINGER: All right. Thank you.

11 JUDGE KUGLER: Anything else?

12 JUDGE VANASKIE: That's all I have.

13 JUDGE KUGLER: All right. Let's turn to the orders
14 to show cause.

15 We have a number of them. Defendants want to dismiss
16 the orders to show cause because they've resolved the problems.
17 That's the Ricky Young, Phyliss Axt, A-X-T, James Polk, Jerome
18 Zimmerman, Estate of Barbara Kaluhiokalani, and the Estate of
19 Mary Hines.

20 Anything else?

21 MR. HARKINS: No updates on those six, Your Honor.

22 JUDGE KUGLER: Okay. And you have a whole bunch of
23 them: Sturgill, George, Worms, Lee, Bartels, Jackson, Wrigley,
24 Petrie, Adams, Guzman, Stratton, Taliaferro, Barzee, Black,
25 Burton, Ghrigsby, Hardy, Henley, Kent, Torres, Higgins and

1 Wesson, you want to relist at the next case management
2 conference, correct?

3 MR. HARKINS: That's correct, Your Honor. We'd ask
4 to continue all of those cases.

5 JUDGE KUGLER: All right. That leaves Benton,
6 Salazar, Brown, O'Callaghan and Martinez. Still unresolved?

7 MR. HARKINS: One update, Your Honor. We've resolved
8 the issues in Martinez. That one can be withdrawn as moot.
9 And we'd ask for dismissal of the remaining four cases:
10 Benton, Salazar, Brown, and O'Callaghan.

11 JUDGE KUGLER: Anybody here on Tommy Benton?

12 (No response.)

13 JUDGE KUGLER: No response.

14 MR. NIGH: Your Honor, I just want to address one
15 thing generally for the plaintiffs. We had mentioned at the
16 last CMC that there are still ongoing issues with MDL
17 Centrality. But it doesn't look that any of these four are
18 particular to those ongoing issues. But that's the reason for
19 the continuing to the next CMC is my understanding.

20 MR. HARKINS: That's correct, Your Honor. We've
21 specifically addressed with the individual plaintiffs' counsel
22 for each of these cases that we've listed to confirm that those
23 issues are not impacting any of the four that we're requesting
24 dismissal of today.

25 JUDGE KUGLER: Okay. Gonzalo Salazar, anybody here

1 on that?

2 (No response.)

3 JUDGE KUGLER: Nope.

4 Dinah Brown, anybody want to be heard on that?

5 (No response.)

6 JUDGE KUGLER: Nope. That's dismissed.

7 And Roseanne O'Callaghan.

8 (No response.)

9 JUDGE KUGLER: That will be dismissed. So there's
10 four of them. Benton, Salazar, Brown, O'Callaghan are all
11 dismissed.

12 Now, you have, let's see, eight more you want to
13 list; is that correct?

14 MR. HARKINS: One update to that list, Your Honor.
15 We can remove number two on your list, the Estate of Brandon
16 Kemp. That can be withdrawn. And we request orders to show
17 cause returnable at the next case management conference in the
18 other seven cases.

19 JUDGE KUGLER: Stacey Thomas, Phillip Quinn, Estate
20 of Alexandra Samocha, Benjamin Andrews, Pauline Harris,
21 Antoinette Smith, and Vicki Lamb, anybody here on any of those?

22 (No response.)

23 JUDGE KUGLER: No response. They'll be listed as an
24 order to show cause.

25 That leaves eleven more you want to list, correct?

1 Any updates on those?

2 MR. HARKINS: No updates to that list, Your Honor.

3 JUDGE KUGLER: Larry Morgan, Thetta Smith, Estate of
4 Joseph Saad, Paul Blanchard, Yuriy Fershter, Gerald Eaton,
5 Regina Hill, Roberta Miller, Igor Berkovski, Janice Parks, and
6 Gary Worthen, anybody here on those?

7 (No response.)

8 JUDGE KUGLER: They will be listed next time. Okay.

9 MR. HARKINS: Thank you, Your Honor.

10 JUDGE KUGLER: Any other issues you want to raise
11 with the Court?

12 MR. HARKINS: None for the defense.

13 MR. HONIK: None for the plaintiff.

14 MR. NIGH: No, Your Honor.

15 JUDGE KUGLER: All right. Next meeting, next case
16 management conference in November, we are going to talk about
17 the trial. I want to spend some time discussing with you how
18 you foresee this unfolding. I want to know from you a week
19 before that conference -- I want to hear from both sides, and
20 you should be talking to each other before that -- as to how
21 long you think the trial is going to take. You know, if you
22 both want to waive a jury, probably not, but I'll need to know
23 things like that, what problems you anticipate are going to
24 occur at the trial.

25 I want some basic information as to what kind of

1 motions in limine you're contemplating. I'm not going to hold
2 you to it 100 percent, but I want to start thinking about
3 timing and things of those issues, how much time we need to
4 prepare. Are there going to be any witness problems that
5 you're aware of? Are there witnesses beyond the subpoena
6 jurisdiction? What are we going to do about that? I want to
7 know those kinds of things.

8 You know, do you want a unanimous jury? Do you want
9 a jury? Or some number less than unanimity. The rule is
10 clear, if you can't all agree, then it's going to be unanimous
11 verdict, things of that nature.

12 I'll talk to you at the time about the way I try
13 civil cases. You are probably not used to the way I pick
14 juries in a case. I use a modified-struck juror system in
15 which you're not going to have people getting excused and then
16 being replaced by someone from the audience. All the jurors
17 are going to be sat. Whatever the number is, it's usually
18 about 25 to 30. They're all going to have a seat up here. So
19 when they leave, that's it, there's nobody to replace them.

20 And I require that the parties exercise their
21 peremptories simultaneously. You get one shot at it. So you
22 can have zero, one, two, or three excuses. You're not going to
23 know what your adversary is doing because I don't go back and
24 forth.

25 And then what I do is once the challenges for cause

1 are ruled upon and the peremptories are done, depending on the
2 length of the trial, I'm assuming that we're going to have
3 eight jurors, it will be the first eight left starting with
4 number 1. You'll get the same list I'm working from, but I'll
5 show this all to you again in November when we talk about it.
6 But we pick the first eight that are left as our jurors.

7 As you know, there are no alternates in civil trials
8 in federal court. And so whoever's left at the end is going to
9 be deliberating to the verdict in the case.

10 We don't use paper exhibits or paper documents,
11 folks. You're going to have to digitize all the evidence that
12 you're going to present at trial. We have pull-down screens.
13 We have big screen TVs we bring in. We have a nomad. We got
14 all kinds of stuff that you can use and you're going to have to
15 become familiar with what we have in our courtroom. And you
16 can work with Mr. MacStravic about that and our technical
17 people.

18 You know, I've seen lawyers who now there's apps and
19 software on iPads that they use to present evidence and things
20 like that, but that's up to you how you want to do it.

21 But what happens is, before trial you're going to
22 submit to us a thumb drive usually that has your proposed
23 exhibits on it. As your exhibit is received into evidence, you
24 of course can -- you'll be displaying it on the screens and do
25 whatever you want with it, but as it's received into evidence,

1 we put it on a server, and it's a server that's dedicated only
2 to the case evidence. And once the case is done, the jurors
3 will be given iPads in which they can access all the evidence.
4 And the great thing about iPads of course is the search
5 function. And they should be able to enter into the search
6 function an exhibit number, name of a witness, something, and
7 up will come the evidence on their iPads while they deliberate.

8 You can also load on those iPads transcripts of
9 testimony and, you know, videos, any kinds of things you have,
10 although the iPads are not able to connect to the Internet.
11 They can only connect to the dedicated server, so you don't
12 have to worry about any of that kind of stuff.

13 My experience doing this for many years is it saves
14 an enormous amount of time for the jury when you have a lot of
15 exhibits in a case and they can search it and find it
16 immediately. So we'll talk more about that. But I'm just
17 alerting you now that you need to digitize any evidence you're
18 going to use at any trial in the case because we're not going
19 to use paper.

20 I charge the jury before your summations. You will
21 know what the charge is because we will spend time on the jury
22 charge before the summations. I work towards consensus. If
23 everybody agrees to take something out in the proposed charge,
24 we take it out. If everybody agrees they want something else
25 in, we put it in. But what we do is we get your requested

1 charge. We'll give you a working draft of it and we'll work
2 off that till we find the final charge.

3 The jurors all get a copy of the charge. You are
4 permitted to refer to the charge in your summations. You could
5 show it up on the screen, talk about it to the jurors. Like I
6 said, they'll all have it. We'll all have the charge that
7 you're working on.

8 I rely on you for the voir dire questions. Don't
9 tell me, Judge, just ask the standard questions. I don't have
10 any standard questions. I want you to tailor it to your
11 specific case. I ask the questions, the voir dire questions of
12 the jurors. There's also going to be in each seat of each
13 potential juror a questionnaire. When I'm done the voir dire
14 portion, I ask each juror in turn to stand up and answer the
15 questions on the questionnaire. That's the personal
16 information. That's their name, where they live, what they do
17 for a living, family, all that personal stuff. We'll give you
18 a copy of that because we don't need that in the general voir
19 dire.

20 When that's done, I'll bring counsel to sidebar.
21 I'll ask you if you have any challenges for cause based on what
22 you've heard, I'll rule on those, and I'll ask you if you have
23 any additional questions for any particular juror or for all
24 the jurors. And I'm very liberal about asking more questions
25 at the time.

1 But I can tell you that process of selecting a jury
2 in that method takes maybe two hours in a case, maybe. So
3 you're going to have to be ready to do your opening statements.
4 I follow the New Jersey state practice. Plaintiff opens first,
5 followed by defendants; and summations it's flipped. Again, I
6 follow the New Jersey practice, is that the defendants go first
7 in the summations and the plaintiff gets the last word in the
8 summations.

9 I'm not a big fan of sidebars because jurors hate
10 them, just hate them. We've all been at this business long
11 enough I think that all you need to do is stand up and say
12 "objection, hearsay," and I'll turn to the proponent of the
13 evidence and say, "Why is this not hearsay?" And we can rule
14 like that. I mean, we all know what the rules are, folks.
15 We've been around this block a few times.

16 The only time I really have a sidebar is if there's a
17 relevance objection and somebody needs to make a proffer that
18 we don't want the jury to hear before I rule on it. Other than
19 that, you know, we can wait till there's a break and things of
20 that nature for objections. Again, we'll talk more about this
21 as we get closer to the trial date. Those are the basic rules.

22 Now, my trial day is from 9:00 a.m. to 2:00 p.m. I
23 started doing that years ago, and the jurors love it because
24 those jurors who have childcare responsibilities, you know,
25 kids coming home from school, they're home, so we don't get

1 those excuses from the jurors. They're out of here. We don't
2 take a lunch break. You know, we take breaks obviously. And I
3 tell the jurors they can bring in snacks and all that for the
4 15-minute breaks we take. And I have found when you compare
5 transcript pages and the number of pages you do in a day, going
6 9:00 to 2:00 without a lunch break, you're getting almost as
7 much testimony done as the old 9:30 to 4:30 with an hour for
8 lunch. I think the lawyers are fresher in the morning. They
9 have more time to prepare in the afternoons, and like I said,
10 the jurors seem to really enjoy that break.

11 The only question I have and am going to have is
12 whether we try cases on Fridays. Normally if the case is -- if
13 the trial is going to last more than two weeks, we do not try
14 on Fridays, just four days a week. I started doing that
15 because it was -- five days a week all day long was destroying
16 the lawyers' practices and their family lives, it was that
17 simple. And lawyers and me were getting really tired quickly.
18 So if we just do it four days a week, I found we all are much
19 more efficient that way. But that's what the trial day is
20 going to look like once we get that thing up and started.

21 But those are some of the issues I want you to think
22 about. I want you to think about length of trial. I want you
23 to think about the challenges of a trial, of this trial, and
24 what we're going to have to deal with and what needs to be done
25 to finally get a jury selected and get this thing rolling.

1 Anybody have any questions at this time?

2 I mean, I know this is throwing all this new stuff at
3 you right now, and we'll have plenty of opportunity to talk
4 more about details, but anybody have any questions right now
5 about that issue?

6 MR. OSTFELD: Your Honor, Greg Ostfeld. In terms of
7 the submission that you would like a week prior to, is it --
8 you've given us a lot of guidelines here. Do you also want a
9 proposed schedule or just kind of a description of the length
10 of trial, the challenges?

11 JUDGE KUGLER: Well, I can guess what your schedule
12 is. You want to start the trial four years from now.

13 MR. OSTFELD: No, Your Honor. I want to start it
14 expeditiously.

15 JUDGE KUGLER: If you want to give me a schedule and
16 you want to work together and give me a schedule, that would be
17 great. I'll certainly consider it. But I think we -- I think
18 we need to move to a trial, we really do.

19 I think your clients want to move to a trial. I
20 think the plaintiffs want to move to a trial. I think, you
21 know, you want to get some questions answered, I get it.
22 That's fine, and we'll do it. But, you know, you want to
23 propose a schedule, fine. We'll take a look at it. That would
24 be great.

25 MR. OSTFELD: Thank you, Your Honor.

1 JUDGE KUGLER: Thank you. All right. Anything else
2 today?

3 MR. HONIK: Not from plaintiffs, Your Honor. Thank
4 you.

5 MR. NIGH: Your Honor, I do have one brief issue. I
6 should have raised it earlier.

7 One other issue is that we want to remind that we
8 expect a rolling production for the losartan, irbesartan
9 documents that we discussed in the past.

10 In the past 30 days, we've received a production from
11 Teva and a smaller production from ZHP. And as far as I'm
12 aware, we have not received a production from any of the other
13 defendants in the past 30 days. We hope that we will receive
14 productions from the other defendants in the next coming weeks.
15 And if we haven't, we'll provide an update to Judge Vanaskie at
16 that time.

17 Thank you.

18 JUDGE KUGLER: Okay. Great. Anything else?

19 MR. OSTFELD: No.

20 JUDGE KUGLER: Thank you, everybody. We'll see you
21 next month.

22 MR. HONIK: Your Honor, do we have a date?

23 JUDGE KUGLER: November 1.

24 MR. HONIK: Thank you, sir.

25 JUDGE KUGLER: One. I like it.

1 THE COURTROOM DEPUTY: All rise.

2 (Proceedings concluded at 1:27 p.m.)

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4 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**
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6 I certify that the foregoing is a correct transcript
7 from the record of proceedings in the above-entitled matter.

8
9 /S/John J. Kurz, RDR-RMR-CRR-CRC

October 5, 2023

10 Court Reporter/Transcriber
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